



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 18.12.2019

CORAM

THE HONOURABLE MRS.JUSTICE R.THARANI

C.R.P. (MD)No.1590 of 2019
and
C.M.P. (MD)No.8399 of 2019

P.Malayarasu ... Petitioner/Petitioner/Respondent

Vs.

R.Ravi ... Respondent/Respondent/Petitioner

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to set aside the fair and final order dated 21.08.2019 made in E.A.No.2 of 2019 in E.P.No.60 of 2016 in O.S.No.51 of 2014 on the file of the Additional District and Sessions Court, Theni at Periyakulam, by allowing this Civil Revision Petition.

For Petitioner : Mr.P.Santhosh Kumar

For Respondent : Mr.K.Guhan

ORDER

This Civil Revision Petition has been filed against the order dated 21.08.2019 made in E.A.No.2 of 2019 in E.P.No.60 of 2016 in O.S.No.51 of 2014 on the file of the Additional District and Sessions Court, Theni at Periyakulam. The petitioner is the defendant and the respondent is the plaintiff in O.S.No.51 of 2014.

2.The suit was filed for specific performance and for injunction not to alienate the property and for recovery of possession. That suit was decreed by the trial Court. The plaintiff filed a petition in E.P.No.60 of 2016 for execution of sale deed. On 15.11.2016, the execution Court directed the plaintiff to file a draft sale deed. At that stage, the defendant filed a petition in E.A.No.2 of 2019 to condone the delay of 452 days in filing a set aside petition and the same was dismissed by the lower Court. Against which, the petitioner filed the present civil revision petition.

3.Brief substances of the E.A.No.2 of 2019 are as follows:

On 15.11.2016, the defendant was suffering from jaundice and was taking treatment and then the petitioner approached his
Advocate, filed a petition to set aside the order along with a



condone delay petition, that petition was returned for not-calculating the date of delay in filing. Thereafter, the petition was misplaced at the Advocate's office. Again the petitioner approached his Advocate and he came to know about the return of the petition and therefore, 452 days delay has occurred in re-presenting the papers. Hence, the same has to be condoned.

4. Brief substances of the counter are as follows:

The reasons stated for the delay are not correct. The defendant received notice in the execution proceedings on 19.06.2016 and filed vakalath on 03.10.2016 and he failed to file counter. The sale deed was executed by the Court on 24.01.2017 itself. A petition for break open and police protection was also filed. Only at that stage, with a false allegation, the petitioner filed this petition.

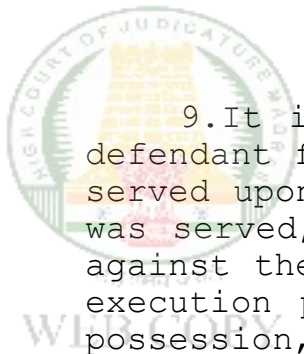
5. The lower Court, after hearing the parties, dismissed the petition. Against which, the petitioner filed this civil revision petition on the following grounds:

The lower Court failed to consider the fact that delay should be approached in a liberal manner to render substantial justice to the litigants. The lower Court failed to go into the merits of the case. The lower Court failed to give opportunity to the petitioner to put forth his case on merits.

6. On the side of the petitioner it is stated that the reason for the delay is that the petitioner was suffering from jaundice and he was not able to contact his counsel. It is further stated that there was a delay due to the missing of bundle in the Advocate's office. Only on notice in the E.P. proceedings, the petitioner came to know about the ex-parte order.

7. On the side of the respondent it is stated that the suit was filed in the year 2014 and the defendant appeared through counsel and filed written statement on 26.04.2015 and after full trial, a decree was passed on 25.01.2016. The defendant did not file any appeal till date. The property in question was attached even before the judgment. In the execution petition in E.P.No.60 of 2016, notice was served upon the defendant and vakalath also was filed, however, no counter was filed and there was no representation, when the Court ordered for the production of draft sale deed on 15.11.2016. Hence, the defendant was declared as ex-parte.

8. On the side of the respondent, it is stated that the sale deed was registered and execution proceedings is now pending only for delivery of possession. The defendant filed a petition to set aside the ex-parte order with a condone delay petition and the same was returned. To re-present those petitions, there was again a delay of 452 days. Since the sale deed was registered, this civil revision petition has become infructuous.



9.It is seen that the suit was decreed after full trial. The defendant failed to file any appeal against that decree. Notice was served upon the defendant in E.P.No.60 of 2016. Even though notice was served, the defendant did not take any steps to file an appeal against the decree. The defendant did not take any action till the execution petition was filed. When the Court ordered delivery of possession, the defendant rushed to the Court not to file an appeal, but to file a petition to set aside the ex-parte order for production of draft sale deed. When the petition was returned, the petitioner did not take steps to re-present the same in time and there is a delay of 452 days in re-presenting the petition. The reasons stated for the delay are routine in nature, which cannot be entertained. Already the sale deed was executed and was registered by the Court. In the above circumstances, there is no reason to interfere in the orders of the Court below. Accordingly, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/TRUE COPY/

/ /2020
Sub Assistant Registrar

To

The Additional District and Sessions Judge,
Theni at Periyakulam.

+1 CC to M/s.K.GUHAN, Advocate (SR-105779[F] dated 19/12/2019)

+1 CC to M/s.P.SANTHOSEKUMAR, Advocate (SR-105820[F] dated 19/12/2019)

C.R.P. (MD)No.1590 of 2019
18.12.2019

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JM/SAR 4/10.01.2020/3P/4C